

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF THE INCORPORATED VILLAGES OF CENTRE ISLAND, EAST ROCKAWAY, FLOWER HILL, FREEPORT, GARDEN CITY, GREAT NECK, GREAT NECK ESTATES, GREAT NECK PLAZA, HEMPSTEAD, HEWLETT BAY PARK, KENSINGTON, KINGS POINT, LAKE SUCCESS, LYNBROOK, MASSAPEQUA PARK, MINEOLA, MUNSEY PARK, NORTH HILLS, OLD BROOKVILLE, OLD WESTBURY, PLANDOME HEIGHTS, PLANDOME MANOR, ROCKVILLE CENTRE, SADDLE ROCK, SANDS POINT, SOUTH FLORAL PARK, STEWART MANOR, THOMASTON, and WESTBURY; THE NASSAU COUNTY VILLAGE OFFICIALS' ASSOCIATION; GREAT NECK/NORTH SHORE CABLE COMMISSION and THE PUBLIC ACCESS TELEVISION CORPORATION, all located in Nassau County, New York.**

The foregoing villages and municipal entities (collectively referred to as “Communities”) located in Nassau County, State of New York, collectively file these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the Communities seek to provide the Commission with basic information regarding their local right-of-way and facility management practices and charges.<sup>1</sup> The Commission should not interfere with these local policies here.

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

Each of the Communities has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission would disrupt this process at substantial cost and irreparable harm to local taxpayers and to the local economy.

There are few issues more integral to a local government than the control of its own streets, highways and rights of way, and the ability to arrange for and regulate the use of its own property.

We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission's limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation. Rather, all of these matters should be left for local regulation.

The Communities have successfully managed their property, in some cases for more than one hundred years. As technology has evolved, they have recognized and encouraged deployment of several broadband networks to date. As a result, at least one broadband service, and in some cases three or more, is available to most the households and businesses in these Communities. There is no evidence that the policies or charges of any of the Communities with respect to placement of facilities in the rights-of-way or on government property (such as water towers) have discouraged broadband deployment. In fact the evidence is to the contrary.

The Communities *welcome* broadband deployment, and their policies allow them to work with any company willing to provide service. The Communities are not aware of even one single complaint regarding any issue concerning any community policy interfering with or delaying broadband service. In fact, most broadband service in the Communities is provided through cable television providers, and each of those providers has been successful in obtaining

the necessary franchise agreements for their cable service (and in most cases, more than one renewal thereof).

The Communities respectfully submit that their policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. There are no known instances of unreasonable delay, or conditions, with respect to any effort by any provider to get access to the necessary rights of way, nor any instances of costs in excess of reasonable amounts necessary to protect the community fisc. On the other hand, we know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, and to have free, open and unfettered access to the rights of ways and facilities which were created and maintained at the expense of our taxpayers. Any deregulation which would require local governments to turn over these public facilities with little or no regulation, and little or no recompense to the community, is to the great detriment of other users, abutting landowners, commuters, and the general taxpayers.

In response to the NOI, the Communities provide the following information:

**I. *Application Procedures, Forms, Substantive Requirements, and Charges.***

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

Each of the Communities requires anyone who wishes to utilize a municipal right of way or facility to apply for necessary permits (e.g. road opening permits, water tower leases, etc.). The local governments review such applications under uniform standards applicable to all other such regulation, and under conditions designed to protect the integrity of the local government

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<sup>2</sup> NOI ¶ 14.

facilities and assure that public property will be respected, and maintained by those users at their own expense and not at the expense of the taxpayers.

The Communities each apply those following right-of-way management and facility placement procedures on a uniform basis, in accordance with existing local Code provisions and regulations. In most cases, those Codes and procedures, and the permit applications, are available on line.

## ***II. Sources of Delays.***

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.<sup>3</sup>

The Communities have processed most applications very quickly. However, in some cases, where the proposed use or location is adverse to the interest of residents or taxpayers, a greater degree of scrutiny will be applied.

## ***III. Improvements.***

The Commission asks whether there are particular practices that can improve processing.<sup>4</sup>

The Communities have kept abreast of technological changes, and the requirements of State and federal law, to improve and streamline the application process. Broadband providers are requested to schedule their installations in coordination with municipal road repairs and/or water tank repairs.

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<sup>3</sup> *Id.*

<sup>4</sup> NOI ¶¶ 14, 29.

#### ***IV. Permitting Charges.***

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.”

Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>5</sup>

In the Communities, broadband and other communication providers pay the same permit fees and charges as are applicable to other users of the public rights of way. Lease agreements have been made for several providers at the local government water towers and at other local government facilities where such installations are suitable.

These charges are important because they defray the costs which the Communities incur for the operation, maintenance, management and inspection of these locations, which are an essential part of protecting and maintaining the public infrastructure.

#### ***V. Local Policy Objectives.***

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<sup>5</sup> NOI ¶ 17.

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>6</sup>

In the Communities, public policies are designed to achieve the following: facilitate the responsible deployment of services; make the services broadly available; ensure public safety; avoid traffic disruption; maintain and repair roadways and other infrastructure; prevent public disruption and damage to abutting property; minimize accelerated deterioration to roads that accompanies street cuts; satisfy aesthetic, environmental, or historic preservation concerns; avoid damage to the property of others; obtain fair compensation for use of public property; protect and preserve the tax base and property values, assure safety and integrity of municipal electrical plant and system, sewer and water plants and systems, and other utility and public service plants and operations.

#### **VI. *Possible Commission Actions.***

Finally, the Commission asks what actions the Commission might take in this area.<sup>7</sup>

As noted above, the Communities strongly urge the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for the Communities, and would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the Communities and their budgets, and may actually make it infeasible to continue to maintain or provide important public services, such as free cable service at municipal facilities, free internet service at public libraries and schools, PEG channels, and functioning and useful Village websites. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs

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<sup>6</sup> NOI ¶ 22.

<sup>7</sup> NOI ¶ 36.

and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

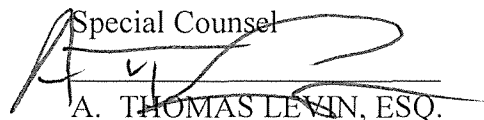
### **CONCLUSION**

The Communities urge the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the Communities policies and procedures are designed to protect important local interests, and have done so for many years without inhibiting the growth or expansion of broadband or cable. There is no evidence that the policies have impaired any company from providing broadband or cable service here, whereas there are many reasons to believe that federal regulations would prove costly and disruptive to our Communities.

Respectfully submitted,

**THE INCORPORATED VILLAGES OF CENTRE ISLAND, EAST ROCKAWAY, FLOWER HILL, FREEPORT, GARDEN CITY, GREAT NECK, GREAT NECK ESTATES, GREAT NECK PLAZA, HEMPSTEAD, HEWLETT BAY PARK, KENSINGTON, KINGS POINT, LAKE SUCCESS, LYNBROOK, MASSAPEQUA PARK, MINEOLA, MUNSEY PARK, NORTH HILLS, OLD BROOKVILLE, OLD WESTBURY, PLANDOME HEIGHTS, PLANDOME MANOR, ROCKVILLE CENTRE, SADDLE ROCK, SANDS POINT, SOUTH FLORAL PARK, STEWART MANOR, THOMASTON, and WESTBURY; THE NASSAU COUNTY VILLAGE OFFICIALS' ASSOCIATION; GREAT NECK/NORTH SHORE CABLE COMMISSION and THE PUBLIC ACCESS TELEVISION CORPORATION,**

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